



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R05-OAR-2017-0082; FRL-9976-70-Region 5]

Air Plan Approval; Illinois; Regional Haze Progress Report

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving the regional haze progress report under the Clean Air Act (CAA) as a revision to the Illinois state implementation plan (SIP). Illinois has satisfied the progress report requirements of the Regional Haze Rule. Illinois has also provided a determination of the adequacy of its regional haze plan with the progress report.

DATES: This final rule is effective on **[insert date 30 days after date of publication in the Federal Register]**.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA-R05-OAR-2017-0082. All documents in the docket are listed on the www.regulations.gov web site. Although listed in the index, some information is not publicly available, i.e., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on

the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either through www.regulations.gov or at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. We recommend that you telephone Charles Hatten, Environmental Engineer at (312) 886-6031 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Charles Hatten, Environmental Engineer, Control Strategy Section, Air Programs Branch (AR-18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886-6031, hatten.charles@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document whenever "we," "us," or "our" is used, we mean EPA. This supplementary information section is arranged as follows:

- I. Background
- II. What is EPA's Response to the Comments?
- III. What Action is EPA Taking?
- IV. Statutory and Executive Order Reviews

I. Background

States are required to submit a progress report every five years that evaluates progress towards the Reasonable Progress Goals (RPGs) for each mandatory Class I Federal area¹ (Class I area) within the state and in each Class I area outside the state which may be affected by emissions from within the state. See 40 CFR 51.308(g). States are also required to submit, at the same time as the progress report, a determination of the adequacy of the state's existing regional haze SIP. See 40 CFR 51.308(h). The first progress report must be submitted in the form of a SIP revision and is due five years after the submittal of the initial regional haze SIP. On June 24, 2011, Illinois submitted its first regional haze SIP in accordance with the requirements of 40 CFR 51.308. EPA approved Illinois' regional haze plan into its SIP on July 6, 2012, 77 FR 39943. On February 1, 2017, Illinois submitted a SIP revision consisting of a report on the progress made in the first implementation period towards the RPGs for Class I areas outside of Illinois (progress report). The emissions from Illinois affected 19 Class I areas located out of the state. Illinois does not have any Class I areas within its borders. The

¹ Areas designated as mandatory Class I Federal areas consist of national parks exceeding 6000 acres, wilderness areas and national memorial parks exceeding 5000 acres, and all international parks that were in existence on August 7, 1977 (42 U.S.C. 7472(a)). Listed at 40 CFR part 81, subpart D.

Illinois progress report included a determination that the Illinois existing regional haze SIP requires no substantive revision to achieve the established regional haze visibility improvement and emissions reduction goals for 2018. EPA is approving the Illinois progress report on the basis that it satisfies the requirements of 40 CFR 51.308.

EPA published a direct final rule on October 18, 2017 (82 FR 48431), approving the Illinois regional haze progress report as a revision to the Illinois SIP, along with a proposed rule (82 FR 48473) that provided a 30-day public comment period.

In the direct final rule, it states that if EPA received adverse comments, EPA will publish a timely withdrawal of the direct final rule in the Federal Register informing the public that the rule will not take effect. EPA received adverse comments during the comment period, and the October 18, 2017 direct final rule approving the Illinois regional haze progress report was withdrawn on December 8, 2017 (82 FR 57836). The adverse comments received are addressed below.

II. What is EPA's Response to the Comments?

EPA received two anonymous comments on the proposed approval of the Illinois regional haze progress report.

Comment #1 - One commenter stated that the source-specific

emissions limits for four sources in the Illinois regional haze SIP are not enforceable as the emission limits were not included in the state's plan but were rather contained in a memorandum of understanding or consent decrees. These four sources are the City of Springfield City Water, Light, and Power electric generating facility (CWLP), the Dominion Kincaid power plant (Kincaid), CITGO Petroleum Corporation (CITGO) Lemont petroleum refinery, and Exxon Mobil Corporation (Exxon Mobil) Joliet petroleum refinery. The commenter raised concern that these limits cannot be enforced by citizens.

EPA's Response to the Comment

The source-specific emission limits for CWLP and Kincaid are contained in federally enforceable permits, as well as in the Illinois' regional haze SIP. Illinois issued joint construction and operating air permits to CWLP and Kincaid pursuant to authority in the Illinois SIP. The two permits were incorporated into the Illinois' regional haze SIP (77 FR 39948). Illinois's progress report confirms that these permits, setting nitrogen oxide (NO_x) and sulfur dioxide (SO₂) emission limits, and operating conditions to meet the Regional Haze Rule requirements of the CAA, are federally enforceable. Additionally, the permits state that they "establish limits for

NO_x and SO₂ for the affected units that are directly enforceable and permanent and that are not contingent upon commencement of construction by the Permittee of additional emission control equipment for the affected units. This is because the emission limits for the affected units are legally required pursuant to section 169A of the CAA and these limits are enforceable." Similarly, Illinois incorporated emission limits and operating conditions from two consent decrees (for CITGO and Exxon Mobil) into minor new source review construction permits issued pursuant to authority in the Illinois SIP. As such, these are federally enforceable permits potentially subject to enforcement through action by citizens. See 42 U.S.C. 7604.

Comment #2 - Another commenter stated that EPA is incorrect in saying that Illinois did not rely on the Cross-State Air Pollution Rule (CSAPR) for its regional haze goals. The commenter notes that in its submittal, Illinois lists the "Transport Rule (Part 1)" under the "on-the books" control measures the state is relying on for the years 2002-2018.

EPA's Response to the Comment - In our direct final rule, EPA noted that Illinois did not rely on the Clean Air Interstate Rule (CAIR) or CSAPR in its regional haze SIP. 82 FR 48432. EPA's position reflects the statement made by Illinois in its

regional haze progress report that "Illinois does *not* rely on the use of the Clean Air Interstate Rule (CAIR) or CSAPR to satisfy its regional haze requirements." Instead, Illinois used state rules and other measures to satisfy the Regional Haze Rule requirements for Best Available Retrofit Technology (BART) in 40 CFR 51.308(e).

The progress report does contain a list of modeled "on-the-books" control measures used in the analysis for the Illinois regional haze plan. The progress report states, "that these control measures were used in the future year modeling prepared by the Midwest Regional Planning Organization (MRPO) prior to the Illinois SIP submittal and are expected to be implemented between 2002 and 2018." The modeling analysis prepared by MRPO included reductions from CAIR, as well as other existing federal measures, to assess anticipated future visibility conditions. (See 77 FR 3971; January 26, 2012). Illinois did not rely on emission reductions from CAIR or CSAPR to satisfy the BART requirements because the state demonstrated that the benefits of Illinois' alternative control strategy satisfied the regional haze BART requirements.

We also note that CSAPR is being implemented at this time in Illinois and other states. Given this, it is unclear how the

commenter's concerns are relevant to the approvability of Illinois' progress report.

EPA evaluated the Illinois progress report which indicates that implementation of the control measures in its regional haze plan is on track to achieve the established regional haze visibility improvement goals for the first implementation period. EPA finds that the Illinois progress report satisfies 40 CFR 51.308.

III. What Action is EPA Taking?

EPA is approving the regional haze progress report submitted on February 1, 2017, as a revision to the Illinois SIP on the basis that it satisfies the requirements of 40 CFR 51.308. The progress report includes an adequate discussion of the implementation of the regional haze SIP measures and of the significant emission reductions achieved. The progress report also includes a determination that the Illinois existing regional haze SIP is sufficient to achieve the established regional haze visibility improvement and emissions reduction goals for the first implementation period. EPA also finds that Illinois has met the requirements for a determination of adequacy of its regional haze plan with the progress report.

IV. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those

areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[insert date 60 days after date of publication in the Federal Register]**. Filing a petition for reconsideration by the Administrator of this final

rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: April 3, 2018.

Cathy Stepp,
Regional Administrator, Region 5.

40 CFR part 52 is amended as follows:

PART 52--APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

2. In §52.720, the table in paragraph (e) is amended by adding the entry "Regional Haze Progress Report" immediately following the entry for "Regional haze plan" to read as follows:

§52.720 Identification of plan.

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(e) * *

EPA-APPROVED ILLINOIS NONREGULATORY AND QUASI-REGULATORY PROVISIONS

Name of SIP provision	Applicable geographic or nonattainment area	State submittal date	EPA approval date	Comments
* * *	* * *	*		
Regional Haze Progress Report	Statewide	02/01/17	[insert date of publication in the Federal Register], [insert Federal Register citation]	
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